

## REMARKS

The Office Action of June 8, 2005 has been received and considered. Claims 3-7, 12-39 and 41-47 have been withdrawn pursuant to an election of species requirement. Reconsideration of the application in view of the preceding amendments and following remarks, and allowance of the pending claims is respectfully requested. Each of the Examiner's rejections is discussed below.

### Section 102

Claims 1 and 8-11 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,449,878 to Lyden ("Lyden"). This rejection is respectfully traversed.

Lyden discloses footwear with an upper 23 and a sole structure having a spring element 51 formed of superior spring element 47 and inferior spring element 50. Superior spring element 47 includes an anterior spring element 48 and a posterior spring element 49. Superior spring element 47 and inferior spring element 50 are typically connected to one another with fasteners 29.

Lyden fails to disclose or make obvious a heel plate assembly secured at one end thereof to an upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, with a medial side of the heel plate assembly having a thickness greater than a thickness of a lateral side of the heel plate assembly, as required by independent claim 1.

The Office Action assert that the text at col. 20, lines 23-67, and/or col. 23, line 38 through col. 24, line 24 of Lyden discloses that the medial portion of Lyden's heel plate assembly has a thickness greater than a thickness of the lateral side of the heel plate assembly.

Applicant respectfully submits that the text of Lyden cited in the Office Action does not disclose the required claim limitation. With respect to the first cited portion of text at col. 20, lines 23-67, Lyden specifically describes an anterior spacer 55 (seen in FIG. 8) of a cushioning medium that is positioned between anterior spring element 48 and posterior spring element 49, which, being part of spring element 51, is described as being made of a resilient material such as metal, e.g., spring steel, a thermoplastic material, or a fiber composite material (col. 10, lines 62-64). Anterior spacer 55 is not a part of a heel plate assembly that extends downwardly from an upper plate and is secured to an upper plate. Specifically, Lyden states that

“an anterior spacer 55 which can possibly consist of a cushioning medium having desired spring and dampening characteristics can be inserted in the area between the anterior spring element 48 and posterior spring element 49, that is, within an area of possible overlap as between the two components. (Col. 20, lines 23-28.)

This anterior spacer 55 certainly cannot be considered to meet the heel plate limitation of independent claim 1. Not only is anterior spacer 55 not a part of the heel plate assembly, it is specifically described as being only in contact with superior spring element 47, that is, it is positioned **between anterior spring element 48 and posterior spring element 49**.

With respect to the second cited portion of text at col. 23, line 38 through col. 24, line 24, Lyden similarly states that

posterior spacer 42 can serve a purpose analogous to that of anterior spacer 55, and vice-versa. Accordingly, a posterior spacer 42 can consist of a cushioning medium having desired spring and dampening characteristics. The posterior spacer 42 can be inserted between the inferior spring element 50 and posterior spring element 49, that is, within an area of possible overlap as between the two components. (Col. 23, lines 48-55)

Posterior spacer 42 is positioned between posterior spring element 49 and inferior spring element 50, which, being part of spring element 51, is described as being made of a resilient

material such as metal, e.g., spring steel, a thermoplastic material, or a fiber composite material (col. 10, lines 62-64). Posterior spacer 42, on the other hand, is described as being formed of a cushioning material such as a natural or synthetic rubber material, or a resilient elastomer such as polyurethane (col. 26, lines 34-37). It simply is not a part of a heel plate assembly that extends downwardly from an upper plate and is secured to an upper plate, it is a separate and distinct element.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

Claims 2 and 40 have been rejected under 35 U.S.C. § 103(a) over Lyden in view of U.S. Patent No. 6,092,314 to Rothbart (“Rothbart”). Rothbart is cited as disclosing a plurality of layers with varying widths as an alternative to a steady slope for a wedge shaped pad in footwear. This rejection is respectfully traversed.

Rothbart fails to overcome the deficiencies of Lyden noted above. Specifically, Rothbart fails to disclose or make obvious a heel plate assembly secured at one end thereof to an upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, with a medial side of the heel plate assembly having a thickness greater than a thickness of a lateral side of the heel plate assembly., as required by independent claim 1.

Rothbart also does not disclose or make obvious a heel plate assembly secured at one end thereof to the upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, the heel plate assembly comprising a first layer; a second layer positioned on the first layer and having a width

less than a width of the first layer; and a third layer positioned on the second layer and having a width less than the width of the second layer, as required by independent claim 40.

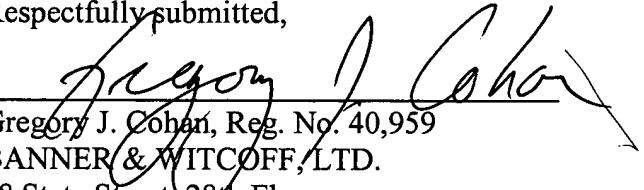
Rothbart discloses a wedge, labeled foot support system 60, which is positioned beneath the user's foot. It is simply not a heel plate assembly secured to an upper plate. Accordingly, the rejection is improper and should be withdrawn.

**Conclusion**

Consequently, pending claims 1, 2, 8-11 and 40 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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Respectfully submitted,

  
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